

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING

CORNETT MANAGEMENT COMPANY, LLC
a foreign corporation,

Plaintiff,

v.

Civil Action: 5:04-CV-22

LEXINGTON INSURANCE COMPANY,
a foreign corporation, FIREMAN'S
FUND INSURANCE COMPANY,
a foreign corporation, BRADY RISK
MANAGEMENT, a foreign corporation, and
HARTAN BROKERAGE, INC., A foreign corporation,

Defendants.

ORDER CONFIRMING PRONOUNCED ORDER OF THE COURT

On August 6, 2007, Plaintiff filed an Emergency Motion For Protective Order requesting that the Court preclude Defendant Lexington Insurance Company from proceeding with a videotaped deposition of Andrew Boiling scheduled for August 8, 2007 in Chicago. Based on the Court's reading of the pleadings filed in this motion and argument by the parties, the Court makes the following FACTUAL FINDINGS:

- 1) The videotaped deposition of Andrew Boiling is not a discovery deposition.
- 2) The videotaped deposition of Andrew Boiling is an evidentiary deposition.
- 3) Prior to July 30, 2007, Defendant gave no notice to Plaintiff that the evidentiary deposition of Andrew Boiling would be taken.
- 4) Defendant notified Plaintiff in the Pre-Trial Order that Andrew Boiling would testify via video as a witness at trial.
- 5) Andrew Boiling lives more than one hundred miles from the place of trial.

The Court makes the following CONCLUSIONS OF LAW:

1) Plaintiff's motion is governed by F.R.C.P. 32(a)(3)(B) which provides that a deposition of a witness is permissible where the witness lives more than one hundred miles from the place of trial.

2) The deposition of Andrew Boiling is necessary to provide all facts to the jury for its decision.

Accordingly, Plaintiff's Motion is **DENIED**.

Because of Defendant's late notice to Plaintiff of the scheduled video deposition, Defendant is ORDERED to pay by 5:00 p.m. on August 7, 2007 all of Plaintiff's costs associated with one lawyer attending the video deposition in Chicago. Anticipated costs include one coach airline ticket, one night's stay at the airport's hotel, and \$200 for additional, reasonable expenses.

Filing of objections does not stay this Order.

IT IS SO ORDERED.

DATED: August 7, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE